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7590 05/21/2009
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| EXAMINER |
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DANG, HUNG Q

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: SCOTT EDWARD KLOPFENSTEIN and DANIEL RICHARD
SCHNEIDEWEND

Application No. 10/030,797
Technology Center 2600

Mailed: May 21, 2009

Before ERIC W. HAWTHORNE *Supervisory Paralegal Specialist*
HAWTHORNE, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on March 12, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

AMENDMENT AFTER FINAL

A review of the file indicates that on July 28, 2008, Appellant filed an Amendment After Final in response to the Non-Final Rejection mailed March 24, 2008. It is not clear whether this Amendment has been considered because an Advisory Action has not been mailed. Clarification from the Examiner is required.

If the Examiner finds that the Amendment After Final should be entered, then the Examiner should mail an Advisory Action indicating entry. The Examiner should also indicate the correct status of the “Status of Amendments” section for Examiner’s Answer mailed November 28, 2008. No further action would be required.

However, if the Examiner finds that the Amendment After Final should not be entered, then the following applies:

APPEAL BRIEF, CLAIMS APPENDIX

A review of the Appeal Brief filed October 2, 2008, reveals that claims 1, 3, and 11 in the Claims Appendix of the Appeal Brief are not consistent as amended in the last entered amendment filed on January 31, 2008. The Claims Appendix assumes entry of the Amendment After Final, filed on July 28, 2008, which amended claims 1, 3, and 11.

The copy of the claims should be in proper format and should not include any markings such as brackets or underlining except for claims in a reissue application in accordance with 37 CFR 41.37(c)(1)(viii). Furthermore, the Claims Appendix cannot assume entry of After Final Submissions for which an Advisory Action (or other Office communication) has not advised of entry. *See also Manual of Patent Examining Procedure* (MPEP) § 1205.02 (8th ed. Rev. 6, Sept 2007) for

details.

Appropriate correction of all claims provided in the Claims Appendix in proper format is required.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

(1) to appropriately respond to the Amendment After Final filed July 28, 2008;

(2) if the Amendment is entered, then the Examiner should indicate so on a PTO-303. The Examiner should also indicate the correct status of the "Status of Amendments" section for the Examiner's Answer mailed November 28, 2008; or

(3) if the Amendment is not entered, then the Examiner should indicate so on a PTO-303. The Appellant should submit a corrected Claims Appendix which reflects the claims as of the last entered amendment. An entire brief is not necessary, only the sections needing correction;

(4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

EWH/saw

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